

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA CIRCUIT

628

JOSEPH L. HOOPER,

Appellant

vs

NO. 19,649

UNITED STATES OF AMERICA,

Appellee

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 13 1965

Nathan J. Paulson
CLERK

William C. Koplovitz
Counsel for Appellant
Appointed by This Court

STATEMENT OF QUESTIONS PRESENTED

1. Whether a Juvenile Court action in contemplation of transfer of a child to the District Court for trial for a capital crime is subject to due process and, if so, is such child in such Juvenile Court proceedings entitled to:

- (a) A hearing at which such child is entitled to present his case against waiver and familiarize himself with the facts which led the Juvenile Court to consider waiver;
- (b) The appointment of counsel by the Juvenile Court to assist the child in safeguarding his constitutional rights, both preceding, and during, the hearing.

2. Whether the Juvenile Court's waiver of jurisdiction over the appellant in this case was improper for the reason that such waiver was not preceded by a "full investigation" as required by law.

3. Whether the District Court abused its discretion in denying appellant's motions that the Court constitute itself a Juvenile Court or, in the alternative, remand the proceeding to the Juvenile Court.

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JURISDICTIONAL STATEMENT

The Juvenile Court of the District of Columbia obtained original jurisdiction over appellant, age sixteen at time of arrest, pursuant to D. C. Code § 11-1551(1963). The Juvenile Court waived its jurisdiction over appellant ~~pur-~~^{PORTEDLY} ~~posedly~~ in accordance with D. C. Code § 11-1553(1963) and the United States District Court for the District of Columbia then tried the appellant as an adult pursuant to D. C. Code § 11-521(1963). Appellant applied for, and was granted, leave to file an appeal in forma pauperis in this Court pursuant to Rule 41 of the Court's Rules. This Court has jurisdiction of this appeal under 28. U.S.C. 1291.

STATEMENT OF THE CASE

Appellant was arrested about 11:30 PM on the night of July 3, 1964, by a police detective who arrived to break up an altercation between appellant and another person on one side, fighting against Messrs. Alan Shinn and Frederick Sedgewick on the other side. Appellant was arrested by the police detective at the scene of the fight, but his companion ran away.^{1/} Appellant and Alan Shinn were taken to Number 5 Precinct where they were kept for only a short time until taken to Number 1 Precinct. There appellant was informed

^{1/} On the following day Matthew Cunningham, co-defendent below, was arrested as appellant's companion in the altercation.

by police homicide detectives that Frederick Sedgewick had been stabbed during the altercation presumably by appellant's companion and had died as a result of the stabbing.

Early in the morning of July 4, 1964, appellant met with his mother, father, a juvenile court officer, and the witness Alan Shinn, at a hearing on a complaint filed at the Juvenile Court by Shinn. Appellant there stated that the complainant, Alan Shinn, grabbed him by the arm and started fighting him and that appellant fought back only as a result of being attacked. Appellant further stated that, while he did see Matthew Cunningham, the alleged stabber of Frederick Sedgewick, on the corner where the altercation occurred, appellant was not with him at the time of the stabbing and did not walk up to Shinn and Sedgewick and accost them as claimed by Shinn in his complaint to the Juvenile Court. ^{2/}

Appellant was formally charged the morning of July 4, 1964, and about 11:00 AM that morning was taken by the authorities to the D. C. Receiving Home where he was held for the next twenty days. A Coroner's Inquest was held July 14, 1964, to which appellant was taken and there represented by counsel supplied by Legal Aid. On July 24, 1964, appellant appeared before the United States Commissioner where he was again represented by counsel. Appellant was duly informed of his rights at that time.

^{2/} This paragraph is based upon information contained in the ~~rules~~ of the Juvenile Court.

Immediately prior to the hearing held before the U. S. Commissioner, the Juvenile Court, on July 24th, handed down an Order in which the Court waived its jurisdiction over the appellant and ordered that appellant be held for trial as an adult before the District Court, for the offenses of (a) robbery, (b) murder, (c) and/or any other offenses arising out of the acts set forth in (a) and (b). The Order gave no reasons for the decision to waive jurisdiction over appellant. ^{3/} During the period between the hearing held by the Juvenile Court officer the morning of July 4th on the complaint lodged by Alan Shinn and the Order handed down July 24th, appellant talked with no one connected with the Juvenile Court concerning the incident in question. Appellant did not engage counsel to represent him on the issue of whether the Juvenile Court should waive jurisdiction nor did the Juvenile Court provide appellant with such counsel. The Court, acting completely ex parte, based its decision to waive jurisdiction over the appellant solely on considerations of which neither appellant, his parents nor anyone representing appellant was apprised. No formal or informal hearing was held by the Court at which appellant or anyone acting on his behalf was given an opportunity to advance reasons why the Juvenile Court should have asserted

^{3/} A copy of Order of the Juvenile Court is reproduced as Appendix A of this brief.

jurisdiction over appellant or to challenge the Court's decision to waive jurisdiction, or to question whether the "full investigation" required by statute to be held by the Juvenile Court before waiver was in fact carried out.

Appellant was bound over to the Grand Jury and an indictment was returned August 24, 1964, charging appellant with (1) first degree (felony) murder, (2) first degree murder, and (3) robbery. Appellant obtained counsel appointed by the District Court in September, 1964.

The trial before the District Court opened on June 29, 1965; with appellant represented by appointed counsel. After the selection of the jury, but before the trial commenced, counsel for appellant made the following alternative motions; (1) that the District Court in its discretion consider itself a juvenile court for the purpose of hearing appellant's case, or (2) that this matter be remanded to the Juvenile Court on the grounds its waiver of jurisdiction was not proper. (TR 59). Counsel further stated that he believed there should be a hearing held to determine whether the case should go before the Juvenile Court (TR 59-60). The prosecuting attorney opposed the first motion on the grounds that it was untimely (TR 60) and opposed the second motion on the grounds that the Juvenile Court had made a study of the appellant before waiving jurisdiction and on the

additional theory that "this is a serious murder case." (TR 61). The District Court denied both motions. (TR 61). The Court did not request, nor did it have before it, the legal and social files of the appellant compiled by the Juvenile Court during its investigation of the appellant.

The trial of appellant continued for five days, at the end of which appellant was convicted of simple assault and robbery and sentenced to a term of eight years pursuant to Section 5010(c), Title 18, U. S. Code and was confined to Lorton Youth Center.

STATUTES INVOLVED

D. C. Code § 11-1551 (1963):

(a) Except as herein otherwise provided, the Juvenile Court has original and exclusive jurisdiction of all cases and in proceedings:

(1) concerning a child as defined by section 16-2301:

(A) who has violated a law, or has violated an ordinance or regulation of the District of Columbia;

D. C. Code § 11-1553 (1963):

When a child 16 years of age or over is charged with an offense which if committed by a person 18 years of age or over is a felony, or when a child under 18

years of age is charged with an offense which if committed by a person 18 years of age or over is punishable by death or life imprisonment, a judge may, after full investigation, waive jurisdiction and order the child held for trial under the regular procedure of the court which would have jurisdiction of the offense if committed by a person 18 years of age or over; or the other court may exercise the powers conferred upon the Juvenile Court by this chapter and subchapter I of chapter 23 of Title 16 in conducting and disposing of such cases.

D. C. Code §16-2307 (1963):

The court may conduct a hearing pursuant to this subchapter in an informal manner, and may adjourn the hearing from time to time. The general public shall be excluded from the hearing and only such persons as have a direct interest in the case and their representatives may be admitted except that the judge presiding at the hearing, by rule of court or special order, may admit such other persons as he deems to have a legitimate interest in the case or the work of the court. Cases involving children may be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury unless a jury is demanded by the child, his parent, guardian, or the court.

D. C. Code § 16-2308 (a):

(a) When the Court finds that the child comes within the provisions of this subchapter and section 11-1551, it may by order duly entered:

- (1) place the child on probation or under supervision of his own home or in the custody of a relative or other fit person, upon such terms as the court determines;
- (2) commit the child to the Board of Commissioners of the District of Columbia or its authorized representative; or to the National Training School for Boys if in need or such care as is given in the school; or to a qualified suitable private institution or agency willing and able to assume the education, care, and maintenance of the child without expense to the public; or
- (3) make such further disposition of the child as may be provided by law and as the court deems to be best for the best interests of the child.

Paragraphs (1), (2), and (3) of this subsection do not authorize the removal of the child from

the custody of his parents unless his welfare and the safety and protection of the public can not be adequately safeguarded without the removal.

STATEMENT OF POINTS

1. Proceedings before the Juvenile Court involving that Court's decision to waive its exclusive jurisdiction over a child should be governed by due process of law.
2. Appellant was denied due process when he was not afforded a hearing by the Juvenile Court prior to its decision to waive jurisdiction over appellant and was not furnished counsel to represent and ~~assist~~ assist him before the Juvenile Court.
3. The Juvenile Court did not conduct ^A "full investigation" as required by statute prior to its decision to waive jurisdiction over appellant.
4. The District Court erred in denying appellant's alternative motions that the Court either (1) constitute itself a Juvenile Court to hear appellant's case or (2) remand the proceedings to the Juvenile Court.

SUMMARY OF ARGUMENT

I

The proceedings instituted by the Juvenile Court to determine whether the Court will waive its jurisdiction over a child are fraught with serious implications for the child. The decision on waiver greatly affects the child's future and quite possibly results in the child's being deprived of his liberty. When the future liberty of any person, child or adult, is in question the proceedings which give ^{RISE} ~~use~~ to the decision must be subject to the fundamental requirements of due process of law.

II

The right to be heard, found in judicial and administrative proceedings involving property, and the right to be represented by counsel, are among the rights inherent in due process of law. The Juvenile Court waiver procedures leading, as they do, to a decision affecting the liberty of a child are subject to fundamental fairness, and are, therefore, arbitrary unless the child is allowed a hearing at which he is represented by counsel, appointed by the Juvenile Court if necessary.

III

The Juvenile Court must precede its decision on waiver with a "full investigation" as required by statute. This "full investigation" includes, at the least, the right of the child to be heard prior to the waiver decision. The Juvenile Court cannot be said to be fully informed of the facts of the alleged offense, and thus make an intelligent decision whether the parens patriae plan of procedure is desirable, unless it interviews the child and his parents.

IV

The District Court cannot merely accept the Juvenile Court's decision to waive jurisdiction over a child. The implications resulting from a waiver decision make it mandatory upon the District Court that it conduct an independent study into the merits of the decision. The Court must not presume that the Juvenile Court acted properly, but is required to study the child's legal and social records. The seriousness of the charge against the child does not absolve the District Court from making its independent study. Rather, when the charge is a serious one the Court has a more imperative reason to investigate to make certain that the Juvenile Court did not err in its decision to waive jurisdiction.

ARGUMENT

I

THE JUVENILE COURT PROCEEDINGS LEADING TO WAIVER OF JURISDICTION OVER A CHILD ARE SUBJECT TO REQUIREMENTS OF DUE PROCESS

When the Juvenile Court undertakes to determine whether or not it will waive its jurisdiction over a child charged with the commission of a crime there are two possibilities confronting the child. If the Court decides to retain its jurisdiction, the child will not be classified a "criminal", but rather will be subjected to the parens patriae philosophy guiding the operations of the Juvenile Court in its treatment of juvenile offenders. However, if the Juvenile Court determines to waive its jurisdiction over the child, such child will be tried as an adult and, if convicted, he will be subjected to adult punishment.^{4/} It has been said that the decision on waiver is "a critically important (act) for the child who may be abandoned as 'incorrigible' and for society which has thus abandoned this child"^{5/} and it is submitted that such a critical decision so fraught with implications for the child involved should be subject to constitutional requirements of fundamental fairness.

^{4/} Appellant in this case was sentenced to imprisonment for a term of eight years.

^{5/} Bazelon, C. J., in Watkins v. United States 119 App. D. C. 409, 343 F. 2d 273, 282 (1964).

It has been observed that "the trend in recent decisions is to hold that there shall be no greater diminution of the rights of a child, as safeguarded by the Constitution, than should be suffered by an adult charged with an offense equivalent to the alleged act of delinquency of the child."^{6/} This trend certainly is more consistent with the basic precepts of justice and fairness than is the statement that a juvenile need only be treated in "a reasonable and decent manner."^{7/}

Nothing short of constitutional due process may be followed by a Court whenever its action could result in depriving a person of his liberty. U. S. Constitution, Amendment V. The crucial question, therefore, is whether a Juvenile Court proceeding on waiver is one which involves the liberty of the child concerned. A mere reading of the Juvenile Court Order in this case, leaves no room for doubt that the waiver proceedings had a direct and substantial impact on appellant's liberty. The Juvenile Court after reciting that there had been a "full investigation" ordered the appellant held for trial in the District Court for robbery and murder (see Appendix A). This action by the Juvenile Court was obviously the most significant step in the chain of events which ultimately led to appellant's conviction and

^{6/} Application for Johnson, 178 F. Supp. 155, 160 (1957).

^{7/} Kent v. United States, 119, U.S. App. D. C. 373, 343 F.2d 247, at 256, (1964).

sentence to eight years in prison. Without the decision to waive jurisdiction, appellant would never have been tried as an adult charged with a capital offense. Clearly, the Juvenile Court's determination of whether or not to take jurisdiction over appellant in this case affected his liberty and, therefore, should have been reached only after a decision-making process which afforded appellant his constitutional right to due process.

II.

APPELLANT WAS DENIED DUE PROCESS IN THE PROCEEDINGS IN JUVENILE COURT LEADING TO WAIVER OF JUVENILE COURT JURISDICTION.

1. No hearing, formal or informal, was afforded appellant.

Assuming that waiver proceedings before the Juvenile Court were subject to the requirements of due process, appellant was deprived of his constitutional rights because he was never afforded a hearing at which he could have presented his case against waiver. Appellant was, as a result of the Court's failure to hold a hearing, denied rights viewed as essential to due process in actions affecting the disposition of property. See, e. g., Mullane v. Central Hanover Bank and Trust Company, 339 U. S. 306 (1950); Ohio Bell Telephone Co. v. Public Utilities Com-

mission, 301 U.S. 292 (1937). Even in an administrative adjudication affecting property the "(the) granting of a fair trial (is) the one sine qua non of administrative procedure" Cooper, Administrative Agencies and The Courts 149 (1951). Certainly the rights involved in waiver proceedings are at least on a par with the rights involved in an administrative adjudication affecting property.

It is difficult to reconcile the recognized "right to be heard" in the context of the Juvenile Court proceedings involving probation or institutionalization retained under Juvenile Court auspices ^{8/} with the denial of the same right to hearing during proceedings instituted to decide the vital question of a juvenile's future status. From the standpoint of its relevance to the future liberty of the child the initial jurisdictional proceeding is as significant, if not more so, than any subsequent action that the Juvenile Court may take with reference to the child.

2. Appellant was not afforded an opportunity to be represented by counsel.

It would be folly to suggest that the right to a hearing is meaningful if the interested party is denied

^{8/} The District of Columbia has recognized this right to be heard. Shioutakon v. District of Columbia, 98 U.S. App. D. C. 371, 236 F. 2d 666 (1956).

effective assistance of counsel. Although the Juvenile Court does not recognize a child's right to counsel in waiver proceedings, such a right has been long recognized in subsequent proceedings held before the Juvenile Court. Shioutakon v. District of Columbia, supra, . And, of course, the Supreme Court places great stress upon the right to counsel guaranteed by the Sixth Amendment. See, Escobedo v. Illinois, 378 U.S. 478(1965); Gideon v. Wainwright, 372 U.S. 335(1963).

Thus, the juvenile is guaranteed the right to counsel if he remains before the Juvenile Court, and he is guaranteed the right to counsel if the Court waives jurisdiction and the child is tried as an adult. It is only logical and consistent with the right to counsel in subsequent procedures before the Juvenile Court that a child should be provided with effective assistance of counsel at the waiver stage of Juvenile Court jurisdiction where the child's future status is determined. It would appear that merely guaranteeing counsel to a child if, and when, he is waived by the Juvenile Court is "locking the barn door after the horse escapes," when effective assistance of counsel may well have prevented the Juvenile Court from waiving jurisdiction in the first instance.

III

THE JUVENILE COURT'S WAIVER OF JURISDICTION WAS INVALID BECAUSE IT WAS NOT PRECEDED BY A "FULL INVESTIGATION".

Congress has vested in the Juvenile Court of the District of Columbia "exclusive jurisdiction" over children charged with offenses which would constitute felonies or misdemeanors if committed by adults. D. C. Code § 11-1551(1963).

A child between 16 and 18 charged with an offense constituting a felony, or a child of any age charged with an offense punishable by death or life imprisonment, may however, be tried as an adult accused of a crime, but only if after "full investigation" the Juvenile Court waives jurisdiction. D. C. Code § 11-1553 (1963). That section provides in full:

When a child 16 years of age or over is charged with an offense which if committed by a person 18 years of age or over is a felony, or when a child under 18 years of age is charged with an offense which if committed by a person 18 years of age or over is punishable by death or life imprisonment, a judge may, after full investigation, waive jurisdiction and order the child held for trial under the regular procedure of the court which would have jurisdiction of the offense, if committed by a person 18 years of age or over; or the other court may exercise the powers conferred upon the Juvenile Court by this chapter and subchapter I of chapter 23 of Title 16 in conducting and disposing of such cases.

The requirement of a "full investigation" has important implications; not only to the child involved, but to society as well. When, as in the instant case, the child is ordered to be tried as an adult for a crime punishable by death, the importance of a truly "full investigation" from the standpoint of the child becomes apparent.

The statutory requirement of "full investigation" means an inquiry not only into the facts of the alleged offense but also into the question whether the parens patriae plan of procedure is desirable and proper. Pee v. United States, 107 U.S. App. D. C. 47, 50, 274 F.2d 556, 559 (1959); Shioutakon v. District of Columbia, supra. An investigation, to meet the statutory requirement that it be a "full investigation", must "permit the Juvenile Court to determine which children will be amenable to the treatment resources at its disposal and to transfer its jurisdiction in cases demanding such action." H. Rep. No. 242, 30th Cong., 1st Sess. 2 (1947).

This Court has held explicitly that "the waiver of Juvenile Court jurisdiction, upon which District Court jurisdiction attaches, depends upon a 'full investigation' by the Juvenile Court." Green v. United States, 113 U.S. App. D. C. 348, 308 F.2d 303 (1962). It has said that "what is required before a waiver is 'full investigation' ". Id., 305.

A "full investigation" to be meaningful and effective requires, at the least, the opportunity for the child to present his case against waiver. The Court of Appeals has held that the "'full investigation' which § 11-914 (now D. C. Code § 11-1553) requires before the Juvenile Court can waive jurisdiction includes informal hearings as provided for in § 11-915" (now D. C. Code § 16-2307 and § 16-2308). United States v. Dickerson, 106 U.S. App. D. C. 221, 225, 271 F.2d 437, 491, (1959). In the instant case, no meetings were held either with the appellant or his family following the hearing on the complaint July 4, held under conditions not conducive to an adequate airing of all the necessary facts. The Court has held that the Juvenile Court judge must be fully advised of all relevant facts so that he may intelligently exercise his discretion. United States v. Stevenson, 170 F. Supp 315, 318 (1959). It is logical that an opportunity to interview the child and his parents will assist the judge in attaining and evaluating the relevant facts necessary to make a decision on waiver. ^{9/}

^{9/} The District Court was fully satisfied that a "full investigation" had taken place when the child's parents were interviewed and the boy himself was seen and talked with. United States v. Anonymous 176 F. Supp. 325, 326 (1959).

IV

THE DISTRICT COURT ERRED IN DENYING MOTIONS THAT 1) THE DISTRICT COURT SHOULD CONSTITUTE ITSELF A JUVENILE COURT TO HEAR APPELLANT'S CASE OR 2) THE DISTRICT COURT REMAND THE PROCEEDINGS TO THE JUVENILE COURT.

With respect to Point IV, appellant requests the Court to read the following pages of the reporter's transcript: TR. 59-61. ^{10/}

Even when the Juvenile Court after a "full investigation" decides to waive its jurisdiction over a child and orders him held for trial as an adult before the District Court, this decision, in and of itself, does not bind the District Court to treat the child as an adult. United States v. Anonymous, supra. Appellant may, at the outset of his trial, petition the District Court to proceed as a juvenile court -- a matter within its statutory power (TR 59). See D. C. Code § 11-1553 (1963). The procedure allows the Court to conduct its own investigation into the merits of waiver and "redetermine the question whether the normal processes of criminal law should apply to the case and to the child, or whether the plan otherwise applicable to him as a juvenile, that is, the parens patriae plan, should be applicable

^{10/} For convenience of the Court these pages of the transcript are reproduced as Appendix B, and attached hereto.

to him." Pee v. United States, supra. This redetermination of the decision on waiver is entirely consistent with the avowed intent of the authorities not to apply adult procedures to a case involving a juvenile unless necessary.

The District Court does not conduct an adequate investigation into the decision on waiver when it merely relies on the presumption that the Juvenile Court acted properly and does not itself consider the factors underlying the Juvenile Court's waiver (TR 61). At the least, the District Court should have obtained and studied the social and legal records presumably compiled and considered by the Juvenile Court during its "full investigation" on waiver. ^{11/} Without such a study, the District Court cannot be said to have had a proper basis for its denial of the alternative motions made by appellant at the outset of trial, and its denial of such motions was therefore arbitrary.

The reasons stated by the Court for not itself sitting as a juvenile court and for not remanding the case to the Juvenile Court for a proper hearing on the waiver issue (TR 61) not only fail to supply a rational basis for the Court's refusal, but actually afford a better basis for granting than for denying the relief requested. The Court made reference to the standards utilized by the Juvenile Court during its

^{11/} See United States v. Anonymous, supra, where the District Court issued a subpoena duces tecum for the Juvenile Court's social and legal records pertaining to the child.

decision-making process pending possible waiver, and the Court commented that the standards were set by a conference between the Juvenile Court and the District Court. However, the Court did not consider or decide whether the Juvenile Court had complied with these standards in the instant case.

The Court made reference to the seriousness of the charge against the appellant and the age of the appellant as constituting reasons why it should not sit as a juvenile court. Certainly the age of the appellant, sixteen at the time of the commission of the acts for which he was being tried, was not a reason for treating him as an adult. Insofar as the seriousness of the charge against appellant is concerned, the mere fact that the crimes involved were of such gravity that appellant was subject to being tried as an adult does not mean that it was right to try him as an adult. This Court has stated that the District Court may not simply rely upon the waiver of the Juvenile Court but must itself make a clear choice between the procedure and process which it will apply in the case of a juvenile. Kent v. United States *supra*, at 259. The more serious the alleged offense, the more in need of the type of assistance and guidance provided under Juvenile Court auspices likely will be the juvenile offender. Certainly the mere fact

that the charge against the juvenile is of a serious nature does not eliminate the necessity for the District Court to make an independent determination of whether the juvenile should or should not be tried as an adult.

Finally, insofar as the denial of appellant's request for a remand of the case to the Juvenile Court is concerned, a reading of the reasons given by the Court for such denial (TR 61) reveals that the District Court actually gave no reason for its action other than the gratuitous assumption that the Juvenile Court had all of the pertinent data relevant to the matter before it when it waived jurisdiction. Such blind faith in the procedures followed by the Juvenile Court has no place in a system under which the "protection of the child" is as important a consideration as protection of the Community."

CONCLUSION

In light of the foregoing, it is respectfully requested that the Court of Appeals reverse the decision below and remand the case to the District Court for further proceedings consistent with the provisions of D. C. Code, Sections 11-1553 (1963) and 16-2307, 2308(a) (1963).^{12/}

Respectfully submitted,

Counsel for Appellant

December 13, 1965

^{12/} After this brief was prepared, this Court handed down its decision in Black v. United States, No. 19038, decided December 8, 1965, which is dispositive of one of the issues in this appeal. Under the ruling in the Black case, the failure of the Juvenile Court to provide appellant with assistance of counsel during the waiver proceedings invalidated the waiver decision of the Juvenile Court. Hence, consistent with its opinion in the Black case, this Court, in the instant case, should reverse and remand to the District Court for remand by that Court to the Juvenile Court for a new determination of waiver.

771-64

D14-10
L.J. 919-44

FILED
THE JUVENILE COURT OF THE DISTRICT OF COLUMBIA

FOURTH AND E STREETS, N.W.

JUL 27 1964

CHIEF JUDGE
MORRIS MILLERASSOCIATE JUDGES
ORRIN W. KETCHAM
MARGRIT M. LAWSON

HARRY M. HULL, CLERK

By the authority vested in me under Section 13 of the Juvenile Court Act of the District of Columbia of June 1, 1938, 52 Stat. 599, ch. 309, as amended, and after full investigation, I do hereby waive jurisdiction over Joseph Louis Hooper, of 1124 - 7th Street, N.E., Washington, D.C. (born September 9, 1947); and I do hereby order such child held for trial under the regular procedure of the U.S. District Court for the District of Columbia for the following offenses which would amount to felonies in the case of an adult:

- (a) Robbery (force & violence): Date of offense - on or about July 3, 1964, in the vicinity of N.E. corner 9th and East Capitol Street, Washington, D.C.
Complainant: Frederick Sedgwick.
- (b) Murder: Date of offense - on or about July 3, 1964, in the vicinity of N.E. Corner 9th and East Capitol Street, Washington, D.C.
Decedent: Frederick Sedgwick.
- (c) And/or any other offenses, arising out of the acts or transactions set forth in (a) and (b) above.

Dated this 24th day of July, 1964, at Washington, D.C.

Thom T. Hull

Chief Judge

to dispose of this particular matter.

You are excused for a few minutes.

(Short recess.)

(The jury is absent.)

THE COURT: There are no witnesses and no jurors in the court room at this time.

MARSHAL HILL: No.

MR. SANDGROUND: May it please the Court, may I make a motion?

THE COURT: Yes.

MR. SANDGROUND: At this time, on behalf of defendant Hooper, I make two motions. First, that the Court in its discretion consider itself a juvenile court for the purpose of hearing the evidence in this case. The defendant Joseph Hooper is a juvenile, being 17 years of age.

Second, I would like to move that this matter be remanded in the alternative to the Juvenile Court on the grounds that the waiver was not proper and that the dissenting opinion in the United States vs. Kent, in which the United States Supreme Court has recently granted certiorari which has not been heard, been considered by the Court as waiver was granted in this case, in the discretion of the juvenile court, and we submit that there should be a hearing to determine whether this case should

properly go before the Juvenile Court because of the tender years of the defendant, his lack of any prior criminal record, and we would submit those alternative motions to the Court at this time.

Thank you.

THE COURT: Mr. Smith.

MR. SMITH: Your Honor, in response to the first motion made, the government objects to that on the grounds that this motion is not timely made. Orderly administration of justice requires that motions of this type be made as a pre-trial matter.

Now, after the jury is selected, counsel comes forward and asked your Honor to sit as a juvenile court.

We submit, your Honor, that that is an untimely motion and your Honor should not entertain such a motion.

Secondly, on the question of remand, we would like to point out to your Honor that the Juvenile Court has made a study of this particular defendant Hooper, and after due consideration of his status as a juvenile, his prior background and the serious nature of this murder, it has made an intelligent decision to waive him to the custody of the District Court for trial as an adult.

I would also like to add that on the fact in

this case, this is a serious murder case. I think your Honor should continue to sit as a U.S. District Court and treat the defendant as an adult.

THE COURT: Is there anything further?

MR. SANDGROUND: Nothing, your Honor.

THE COURT: The Court has before it then, counsel representing defendant Hooper, that this court sit as a juvenile court to conduct a trial of this defendant.

The Court, taking cognizance of this fact that the Juvenile Court has its standards which the Court recalls were set by conference between Juvenile Court, District Court, that the seriousness of this particular case and the age of the defendant do not warrant this court to sit as a juvenile court.

Therefore, that motion is denied.

On the question of remand, the court is of the opinion that the Juvenile Court, having before it all of the pertinent data pertaining to the matter, and having in accordance with the Juvenile Act, waived jurisdiction to this court, the Court will deny that motion.

An order will be prepared and will be inserted in the record.

MR. DAY: May we approach the Bench on a very small matter?

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objection to original

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